Filed 6/17/19 P. v. Rodriguez CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. FRANK ESTRADA RODRIGUEZ, Defendant and Appellant.	B288343 (Los Angeles County Super. Ct. No. GA098587)

APPEAL from an order of the Superior Court of Los Angeles County, Victor D. Martinez, Judge. Affirmed.

Megan Hailey-Dunsheath, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Idan Ivri and Robert M. Snider, Deputy Attorneys General, for Plaintiff and Respondent.

After he pled no contest to felony grand theft, appellant Frank Estrada Rodriguez received a suspended sentence and was placed on formal probation for five years. Seven months later, appellant was arrested and charged with three new offenses. The trial court revoked his probation subject to a revocation hearing.

The trial court held the revocation hearing approximately five months later, in conjunction with the preliminary hearing in the new case. Appellant, who was acting in propria persona, told the court he had not been advised that his preliminary hearing would be held that day and requested a continuance so he could receive discovery, retrieve his legal paperwork, and offer witnesses in support of his involuntary intoxication theory. The trial court denied the continuance and held the hearing, after which it held appellant to answer on the new charges and found him in violation of his probation. The trial court revoked probation and imposed the previously suspended sentence of six years.

Appellant now contends that his due process rights were violated because he was not given the opportunity to investigate the charges, prepare a defense, or present witnesses on his behalf before his probation was revoked. He argues that the trial court should have granted a continuance or bifurcated the revocation hearing from the preliminary hearing. We reject his contentions and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In September 2016, appellant pled no contest to felony grand theft (Pen. Code, § 487, subd. (a))[1] in connection with his theft of a package that law enforcement officers planted on the

[1]All further statutory references are to the Penal Code unless otherwise indicated.

front porch of an Arcadia home. Appellant also admitted a strike prior. (§§ 667, subds. (b)-(j), 1170.12.) Pursuant to appellant's plea agreement with the prosecution, the trial court sentenced him to the high term of three years, doubled to six years due to his strike conviction. The trial court suspended execution of appellant's sentence and placed him on formal probation for five years. As conditions of his probation, appellant was ordered to submit his person and property to search and seizure and to obey all laws.

On June 23, 2017, appellant was arrested and charged with driving in willful or wanton disregard for the safety of persons or property while fleeing a pursuing peace officer (Veh. Code, § 2800.2, subd. (a)), driving against traffic while fleeing a pursuing peace officer (Veh. Code, § 2800.4), and resisting or obstructing a peace officer (§ 148, subd. (a)(1)). The trial court revoked appellant's probation on August 4, 2017 and set the matter for a hearing on August 16, 2017.

The probation revocation hearing subsequently was continued numerous times for reasons not clear from the record. On December 14, 2017, at a hearing at which appellant was present, the trial court ordered the revocation hearing to run concurrently with the preliminary hearing in appellant's new case. It set the combined hearing for January 19, 2018.[2]

At the outset of the January 19 hearing, appellant, who was representing himself, told the court he was not ready to proceed. He explained, "I was not informed this would be my prelim. I was told I have 10 days after today. I still haven't got

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[2]The hearing also was supposed to include a pretrial conference for a separate misdemeanor matter, but the court trailed that portion at appellant's request and waiver of time.

all of my discovery." The court then asked appellant to clarify what information he wanted prior to the hearing. As relevant here, appellant told the court that he wanted to present an involuntary intoxication defense and needed statements from and subpoenas for two witnesses, including "the gentleman that had the liquid that I accidentally drank" to cause the alleged intoxication. Appellant's investigator advised the court that he had attempted to contact the witnesses twice by phone but had not been successful. The court found that the investigator had been diligent but denied appellant's request "to delay the prelim, based on the fact that you haven't contacted two particular witnesses that would testify concerning an alleged involuntary intoxication defense." Appellant then informed the court that he also wanted to call a toxicologist as an expert witness in support of his involuntary intoxication defense. The court explained that such testimony would not be admissible without foundational testimony from the other proposed witnesses, and again denied the request to continue the hearing.

Appellant also told the court that he did not bring his "work product" consisting of "questions [and] what not [*sic*] for the toxicologist and witnesses and officers." The court told appellant that the hearing would be going forward but that he would be welcome to cross-examine the two law enforcement officers the prosecution planned to call as witnesses. When appellant reiterated that he needed his paperwork so he could ask about the issues of involuntary intoxication and law enforcement pursuit, the court responded, "It appears you have a lot of knowledge concerning the activities that . . . allegedly took place on the day of the incident." Appellant agreed, stating that he had read the police report "numerous times" and prepared specific

questions to ask. The court then ruled, "The matter was called for preliminary hearing the last time you were here, Mr. Rodriguez, so you should have been prepared, and I intend to go forward today. So your request to delay the preliminary hearing so that you can attempt to retrieve whatever so-called work product will be denied."

The prosecution then called its first witness, Baldwin Park police officer Robert Larivee. Larivee testified that he was driving a marked police vehicle around 11:00 p.m. on June 22, 2017 when he saw appellant drive a blue Ford out from behind several closed businesses. Larivee, who initially was driving in the opposite direction, performed a U-turn and got behind appellant. Appellant accelerated and ran a stop sign. Larivee activated the lights and siren of his police vehicle, but appellant continued driving, at increasingly high rates of speed. Larivee pursued him but abandoned the chase when appellant entered the 605 freeway and began driving north in the southbound lanes. Shortly thereafter, Larivee learned from an air unit that appellant had "foot-bailed" from the vehicle. He and other officers set up a "containment" and apprehended appellant about 30 minutes later.

Appellant declined to cross-examine Larivee. He stated, "At this time, Your Honor, I'm still going to object. Like I said, I'm not prepared for prelim, so I'm, you know, just staying silent for now." The court deemed appellant's cross-examination waived and invited the prosecution to call its second witness. The prosecution instead elected to submit on Larivee's testimony alone. The court asked appellant if he wished to be heard "other than what you already mentioned that you're noting your objections?" Appellant replied, "Not necessary, Your Honor."

The trial court held appellant to answer on the two driving-related offenses only; it found that the prosecution did not carry its burden on the charge of resisting a peace officer. The trial court also found that appellant violated his probation, "based on the testimony that the court heard this morning." It set arraignment in the new case and sentencing for the probation violation for February 2, 2018.

The sentencing hearing was held on February 5, 2018, after appellant failed to appear for the February 2 hearing. he court imposed the previously suspended sentence of six years and awarded appellant 796 days of custody credit.

Appellant timely appealed.

DISCUSSION

Appellant's sole contention on appeal is that his due process rights were violated at the hearing. He argues that the trial court's "denial of a reasonable continuance" to allow appellant to retrieve his work product or "to investigate and secure witnesses deprived Mr. Rodriguez of his opportunity to present a defense to the revocation." "We review procedural due process claims de novo[,] because 'the ultimate determination of procedural fairness amounts to a question of law.' [Citation.]" (*In re Jonathan V.* (2018) 19 Cal.App.5th 236, 241; see also *People v. Stanphill* (2009) 170 Cal.App.4th 61, 78.)

"[C]onstitutional principles permit the revocation of probation when the facts supporting it are proven by a preponderance of the evidence." (*People v. Rodriguez* (1990) 51 Cal.3d 437, 441.) The facts are proven at a hearing, which may be coordinated with the preliminary hearing where the reason for the revocation is the alleged commission of a new offense. (*People v. Arreola* (1994) 7 Cal.4th 1144, 1159.) At a probation revocation

hearing, the defendant is entitled to due process protections equivalent to those applicable in the parole revocation context. (*Rodriguez*, *supra*, 51 Cal.3d at p. 441.) Those requirements include: "(1) written notice of the claimed violations, (2) disclosure of adverse evidence, (3) the right to confront and cross-examine witnesses, (4) a neutral and detached hearing board, and (5) a written statement by the fact finders as to the evidence relied on and the reasons for revocation."[3] (*Ibid.*, citing *Morrissey v. Brewer* (1972) 408 U.S. 471, 489.) In addition, the defendant must be afforded the "opportunity to be heard in person and to present witnesses and documentary evidence." (*Black v. Romano* (1985) 471 U.S. 606, 612.)

Although our review of his due process claim is de novo, "[w]hether good cause exists [to continue a probation revocation hearing] is a question for the trial court's discretion." (*People v. Johnson* (2013) 218 Cal.App.4th 938, 942.) The trial court did not abuse its discretion in denying appellant's request for a continuance—which, we note, mentioned only the preliminary hearing, not the probation revocation hearing. Appellant had more than five months in which to prepare for the probation revocation hearing, which was continued multiple times from August 2017 through January 2018. He suggests that amount of time was insufficient to prepare his defense by pointing to *People v. Mosley* (1988) 198 Cal.App.3d 1167 (*Mosley*), but that case is not analogous.

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[3]"[A] reporter's transcript of a court's oral statement of reasons for revoking probation satisfies the due process requirement of a written statement as to the evidence relied on and the reasons for revocation." (*People v. Moss* (1989) 213 Cal.App.3d 532, 533.)

In *Mosley*, the defendant was notified that his probation was subject to revocation after he was arrested for rape. His probation revocation hearing was held concurrently with his jury trial on the rape charge. (*Mosley*, *supra*, 198 Cal.App.3d at p. 1170.) While the jury was deliberating, the court asked the parties to address the issue of probation revocation. The prosecutor mentioned at that time, for the first time, that evidence at trial indicated that the defendant violated a second probation condition by drinking alcohol, and asked the court to consider revoking probation on that basis. (*Ibid.*) After the jury acquitted the defendant of the charged rape, the court found that the defendant had violated his probation by drinking alcohol and revoked his probation. (*Ibid.*) On appeal, the defendant argued that he had been denied due process because he was not given proper notice of the basis for revocation. (*Id.* at p. 1172.) The appellate court agreed, finding that "[t]he evidentiary phase of the hearing was completed before either he or the court was aware of the charge which ultimately constituted the basis for revocation. Mosley had no opportunity to prepare and defend against that allegation." (*Id.* at p. 1174.)

Here, appellant had ample opportunity to prepare for and defend against the allegation that he violated the law in June 2017. After being arrested and charged with three new offenses stemming from the June incident, he was notified of the basis for revocation in August 2017. He was present at multiple hearings at which the revocation hearing was continued, including one held on December 14, 2017, when the court set the probation revocation hearing to run concurrently with the preliminary hearing and expressly set the probation revocation hearing for January 19, 2018. Appellant, who was representing himself,

advised the court that he had in fact prepared for the hearing. He stated that he had read the police report "numerous times," devised an involuntary intoxication defense, and prepared questions for cross-examination of the prosecution witnesses as well as his own witnesses. Appellant's investigator also had time to locate and attempt to contact appellant's witnesses, one of whom lived out of state, and had brought various legal materials to court for appellant's use.

Appellant also had the opportunity to present a defense. Even without his desired witnesses, appellant could have attempted to elicit facts in support of his involuntary intoxication defense by cross-examining Larivee about his conduct during the alleged pursuit. The trial court invited appellant to do so, and also gave him an opportunity to generally "be heard." Appellant's refusal of these invitations was not a violation of his due process rights. His failure to bring his paperwork with him to court likewise did not entitle him to a continuance or violate his due process rights. "A defendant appearing in propria persona is held to the same standard of knowledge of law and procedure as is an attorney." (*People v. Clark* (1990) 50 Cal.3d 583, 625.) An attorney generally would be expected to bring his or her materials to a hearing; the court did not abuse its discretion by holding appellant to the same standard.

DISPOSITION

The order revoking appellant's probation is affirmed.

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COLLINS, J.

We concur:

MANELLA, P. J.

WILLHITE, J.